

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 814 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No.

2. To be referred to the Reporter or not? No. :

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No.

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? : NO
No.

JAMILABEN HAJIHUSEIN NAGANI

Versus

STATE OF GUJARAT

Appearance:

MR GAURANG H BHATT for Petitioner
MR HH PATEL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 05/09/2000

ORAL JUDGEMENT

Heard the learned advocate for the petitioner.
The respondents have acquired the lands admeasuring
35,00,000 sq.mtrs. belonging to 350 land owners under
Land Acquisition Act for Thebi Irrigation Scheme. The
petitioner's land admesasuring 3206.90 sq.mtrs. of
survey no. 89 was also acquired by the respondents in

December, 1992. At that time, the said land was already converted into non-agricultural land. The Land Acquisition Officer and Deputy Collector by his award dated 23rd February, 1995 awarded compensation at the rate of Rs.12/- per sq.mtr for Bagayat land, Rs. 8/- per sq.mtr. for Jirayat land and Rs.50/- per sq.mtr. for non-agricultural land. The petitioner challenged the said award before District Court, Amreli being Land Reference case no. 82 of 1995. The District Court, Amreli by its judgment and award dated 9th January, 1998 awarded compensation at the rate of Rs.400/- per sq.mtr. against claim of Rs.1000/- per sq.mtr. and the respondents were directed to pay Rs. 17,51,323-40 ps. alongwith interest at the rate of 9% per annum for the year 1992-93 and at the rate of 15% per annum from 1993-94 till realisation of the said awarded amount.

2. Being aggrieved by the said judgment and award dated 9th January, 1998 in LAR No. 87 of 1995 passed by the District Court, Amreli, the respondents preferred First Appeal No. 995 of 1998 before this Court. In June, 1998, the respondents have paid an amount of 6.67% of the enhanced compensation to the petitioner to the tune of Rs. 1,39,677/- and the said amount was permitted to be withdrawn on executing personal bond by the petitioner. The above First Appeal was rejected by this Court vide its judgment and order dated 4-5-1999 confirming the compensation awarded at the rate of Rs. 400/- per sq. mtr. of non-agricultural land, as per the judgment and award dated 9-1-1998 by the Reference Court, Amreli. Being aggrieved by the said judgment of this Court, the respondents preferred an SLP before the Apex Court, being Special Leave Petition (Civil) No. 331 of 2000. The Apex Court, after hearing the parties, on 10th January, 2000 has passed the following common order:

"Delay condoned.

Leave granted. Printing dispensed with. There will be stay on the condition that the petitioner will deposit 25% of the enhanced amount of compensation. The respondents are at liberty to withdraw the same after furnishing security to the satisfaction of the Registrar, High Court of Gujarat, Ahmedabad."

3. When the amount was not deposited by the respondent authorities in compliance with the order of the Apex Court, the petitioner served the respondents with a notice dated 9.2.2000. Then the respondents deposited an amount of Rs.2,09,835/- on 21st March, 2000, after deducting the amount of Rs. 6,638/- being 10% of

income-tax and being 5% of new tenure land from the payable amount of Rs. 2,16,473/-. A demand draft dated 18.3.2000 has been deposited with the Registrar, High Court of Gujarat, which has been encashed and realised on 29.3.2000.

4. Thereafter the petitioner moved an application dated 21.3.2000 before the Registrar of this Court for withdrawal of 25% of the enhanced amount of compensation deposited by the respondents, on execution of personal bond by them. The Assistant Registrar of this Court, issued notice no. SC/Civil 3128 to 3134/72/1003/2000 dated 20th April, 2000 directing the petitioner to furnish bank guarantee/solvent surety in this court for withdrawal of 25% of the enhanced amount of compensation deposited by the respondents in compliance of the order of the Apex Court. Therefore, the petitioner furnished solvent surety on 9.5.2000 alongwith solvency certificate. The Incharge Registrar of this Court by his order dated 16th May, 2000 at Annexure "F" directed the petitioner to furnish bank guarantee for withdrawal of the 25% of enhanced amount of compensation which has already been deposited in this Court. Thereafter on the same day, the petitioner filed Review Application and the Registrar of this Court, by his order dated 23rd May, 2000 rejected the application and directed the parties to approach the court concerned for bringing specific orders for furnishing solvent security instead of bank guarantee. Hence, the petitioner has filed this Revision Application against the orders of the Incharge Registrar and the Registrar.

5. The learned counsel for the petitioner contended that as per the common order of the Apex Court, the other three persons namely (1) Madhabhai Gobarbhai (2) Nagjibhai Gobarbhai and (3) Gamanbhai Parbatbhai Savalia enlisted at serial nos. 1 and 2 of Annexure "B" have been permitted by the Registrar to withdraw an amount of Rs. 5,85,000/- and Rs. 1,40,163/- respectively on furnishing solvent security on 10th May, 2000. Thus, the contention of the learned counsel for the petitioner is that other persons who were also directed by the common order of the Supreme Court have been permitted to withdraw the amount on furnishing solvent security, but the petitioner has been refused to withdraw the amount of furnishing solvent security. As stated above, as such the petitioner is also entitled for withdrawal of the entire amount deposited in this Court in compliance with the common order of the Supreme Court.

6. Rule was issued on 22-8-2000 and it was served on

28-8-2000 by Direct Service and an affidavit has been filed to that effect on 30-8-2000. The learned counsel for the petitioner submitted that the petitioner is a poor ordinary and is losing substantial amount of interest on the amount which has already been deposited in this Court in compliance with the common order of the Supreme Court. The petitioner is a poor ordinary man who has been deprived of their livelihood by acquiring their nonagricultural land, hence the Supreme Court directed the State Government to deposit 25% amount of the enhanced amount of compensation and the petitioner has been permitted to withdraw the same on furnishing surety to the satisfaction of the Registrar of the High Court. There is no direction of the Supreme Court that the amount should be released on furnishing Bank guarantee. It is impossible for the poor petitioner to make arrangement of a huge amount for depositing in the Bank as Bank guarantee for the withdrawal of the amount deposited with the Registrar of the High Court in compliance with the Supreme Court's order. That is why in the Supreme Court's order the words "to the satisfaction of Registrar" have been mentioned. The intention of the Supreme Court is that the amount should be released on furnishing security to the satisfaction of the Registrar. In case, Banka guarantee was intended, then there was no need to add words "to the satisfaction of the Registrar." It is also submitted that in case the petitioner could not be able to succeed in the case, the amount taken by them can be realised from the solvent sureties. Secondly, the Registrar has adopted discriminatory attitude in the case of the present petitioner and the petitioner was directed by the Registrar to furnish bank guarantee for the withdrawal of the amount deposited for them while other persons have been permitted to withdraw the amount on furnishing solvent sureties.

7. In the instant case, it is not disputed that the Supreme Court has directed the State Government to deposit 25% of the enhanced amount of compensation. It is also not disputed that the Supreme Court has directed the Registrar to permit the petitioner to withdraw the same after furnishing security to the satisfaction of the Registrar. It is also not disputed that three other persons have been permitted to withdraw the amount by the Registrar on furnishing solvent security. Thus, it does not appear to be reasonable to direct the petitioner to furnish bank guarantee for the withdrawal of the amount as other persons have already been permitted to withdraw the amount on furnishing solvent security. As the Registrar has already permitted other persons to withdraw

the amount on furnishing solvent sureties in compliance with the common order of the Supreme Court, hence the Registrar ought to have permitted the petitioner to withdraw the amount on furnishing solvent sureties and he should not have adopted different procedure in releasing the amount to the petitioner.

8. Learned counsel for the petitioner submitted that the similar issue has already been decided by this Court in Civil Revision Applications No. 579 of 2000 and 580 of 2000 on 28-6-2000 as well as C.R.A. No. 779 of 2000 on 17-8-2000 and C.R.A. No. 812 and 813 of 2000 today i.e. 5-9-2000. He has also asserted that on the basis of those orders the petitioner is entitled to withdraw the amount on furnishing solvent security of the like amount instead of Bank guarantee.

9. Learned A.G.P. could not point out that any Special Leave Petition has been filed by the the State Government before the Supreme Court against the aforesaid orders passed in C.R. As. No. 579/2000, 580/2000, 779/2000, 813/2000 and 813/2000.

10. In the facts and circumstances of the case, I think it just and proper to direct the Registrar to permit the petitioner to withdraw the amount on furnishing solvent surety. In the result, this Revision Application is allowed. The order dated 16.5.2000 of the Incharge Registrar and the order dated 23.5.2000 of the Registrar of this Court are hereby quashed and set aside. The Registrar is directed to permit the petitioner to withdraw an amount of Rs. 2,09,835/- or the amount for which the petitioner is entitled on their furnishing solvent surety, as has already been done in the cases of three other persons, in compliance with the common order of the Supreme Court. Rule is discharged with no order as to costs.

11. Lastly, the learned AGP requests to stay the execution of this order for a period of four weeks. I do not find any reasonable ground to acceed to the prayer made by the learned AGP. This request is therefore, rejected.

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/JVSatwara/